

1980

Sandra St. Pierre v. Stanley W. Edmond : Brief of Appellant

Utah Supreme Court

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AUTHORITIES CITED

Rule 60(b), U.R.Civ.P.	3, 4
Utah Code Ann. §30-3-5, (1953, as amended)	3, 5
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IN THE SUPREME COURT OF THE STATE OF UTAH

SANDRA ST. PIERRE,)
)
 Plaintiff and Appellant,)
)
 -vs-)
)
 STANLEY W. EDMONDS,)
)
 Defendant and Respondent.)

Case No. ~~16662~~-17075

STATEMENT OF NATURE OF CASE

This was an action brought by a former wife against her former husband, alleging (1) perpetration of a fraud upon the Court in the divorce action between the parties and (2) existence of conditions and circumstances sufficient to justify modification of property disposition in the divorce decree.

DISPOSITION IN LOWER COURT

The action was dismissed as prayed for in Defendant's first responsive pleading to Plaintiff's Amended Complaint.

RELIEF SOUGHT ON APPEAL

Appellant seeks this Court's determination that her Amended Complaint does indeed state a claim upon which relief may be granted.

STATEMENT OF FACTS

Plaintiff (Appellant) and Defendant (Respondent) were formerly husband and wife, divorced by decree of the Fifth Judicial District Court in and for Wasington County, State of Utah in Civil No. 6588. Plaintiff (Appellant) originally commenced the action for divorce, obtaining the Acknowledgment, Consent and Waiver of the Defendant to her Complaint. A Property Settlement Agreement was executed. The matter was heard by the Honorable J. Harlan Burns on the 11th day of April, 1978. Under the terms of the Complaint, agreed to by the Defendant and testified to by the Plaintiff at the hearing, Plaintiff was to receive moderate amounts of property from the marital estate. The parties had been married seventeen years.

On or about the 12th day of April, 1978, Defendant (Respondent) insituted a campaign of harassment, threats and physical and verbal abuse against the Plaintiff (Appellant) culminating in his unilateral Withdrawal of Consent to Default filed the 21st day of April, 1978, filing of a Counterclaim, and entry of an Acknowledgment, Consent and Waiver executed by Plaintiff (Appellant) under the most extreme duress. Hearing was held on Defendant's Counterclaim on the 10th day of May, 1978, and Findings of Fact and Conclusions of Law were entered accordingly. Plaintiff was awarded nominal amounts of property from the marital estate.

This action was commenced in the Fifth Judicial District Court by the filing of a Complaint on the 11th day of January, 1980. The two causes of action of the complaint alleged (1) that the judgment should be set aside under Rule 60(b), U.R.Civ.P., on the ground of fraud upon the Court caused by the presentation of the Acknowledgment, Consent and Waiver to the court as a voluntary instrument and on the ground of duress and (2) that Plaintiff was entitled to modification of the Decree of Divorce under Utah Code Ann. §30-3-5 (1953, as amended) on the ground that circumstances justified modification of the decree.

Defendant, after having been served with a summons and complaint in this action, made a motion to dismiss.

The court ordered dismissal of the complaint on the ground that claims of intrinsic fraud are more properly heard under Utah Code Ann. §30-3-5 (1953, as amended) and such actions would be more properly brought in the original divorce lawsuit, and further stating that the second cause of action, claiming relief under Utah code Ann. §30-3-5 (1953, as amended) should be brought in the original divorce lawsuit.

ARGUMENT

POINT I. DISMISSAL IS NOT A DISCRETIONARY REMEDY

Dismissal of a complaint for failure to state a cause of action must rest on a sound legal basis. The essence of the motion is the legal insufficiency of the allegations of the complaint. Dismissal signifies that even if all the averments of the complaint are assumed true, the complaint would fail to establish any legal right of recovery.

POINT II. PLAINTIFF'S FIRST CAUSE OF ACTION DOES STATE

A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Plaintiff's first cause of action is based upon the facts therein alleged, and states a claim within the language of Rule 60(b), U.R.Civ.P., which allows courts the power to "entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court."

The model of Rule 60(b) in the federal rules has been construed to allow hearing of actions such as those plead by Plaintiff. See [Anno., 19 ALR Fed. 761,] construction and application of provision of Rule 60(b) of Federal Rules of Civil Procedure that rule does not limit power of Federal District Court to set aside judgment for "fraud upon the court". Traditionally, the courts have allowed collateral

attack upon a judgment or decree on the grounds of intrinsic fraud only, is distinguished from extrinsic fraud. The authorities hold that under the rules of civil procedure, to a great extent, this distinction has been abolished. Wright, Federal Civil Procedures, §2860.

Therefore, Plaintiff's first cause of action does state a claim which should be allowed.

POINT III. PLAINTIFF'S THIRD CAUSE OF ACTION STATES A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Plaintiff's second cause of action seeks to invoke the equitable powers of the court under Utah Code Ann. §30-3-5 (1953, as amended). That section provides, in part:

The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary.

While the general construction of this rule and general application has been in cases where subsequent changes in circumstances allow modification or make it reasonable and necessary, it is submitted that the intent of the statute is to allow the court plenary power over the persons and property of the parties to a divorce proceeding, not only at the time of the divorce, but following the

divorce to insure that the relative status of the parties is equitably maintained.

Plaintiff submits that the recent case of Boyce v. Boyce, No. 16342, filed March 5, 1980, in this court, upholds Plaintiff's position that the court retains the equitable power to make substantial adjustments in the positions of the parties as justice may require.

Plaintiff's second cause of action therefore states a claim upon which relief may and should be granted, and therefore the dismissal as to that cause should also be reversed.

CONCLUSION

BOTH OF PLAINTIFF'S CAUSES OF ACTION STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED.

While Plaintiff might have chosen other methods in which to cast her pleadings, the fact that she cast them in an independent action, as a complaint, does not justify dismissal of those claims on that basis alone. To so hold would allow the court's discretionary power over the manner in which individuals actions are carried forward in the court, when there is no substantial legal difference as to methods employed.

It is therefore submitted that the Order Dismissing
the Complaint should be reversed.

DATED this 8th day of August, 1980.



STEVEN E. SNOW
For David Nuffer
Attorney for Sandra St. Pierre

MAILING CERTIFICATE

I hereby certify that on the 8th day of August,
1980, I served two copies of the foregoing BRIEF OF APPELLANT
on Mr. Phillip L. Foremaster, Attorney for Stanley W. Edmonds,
by depositing said copies in the U.S. Mail, postage prepaid,
addressed to:

Mr. Phillip L. Foremaster
Attorney at Law
494 East Tabernacle
St. George, Utah 84770



Secretary